State of New Mexico
General Services Department
Purchasing Division

Statewide Price Agreement Amendment

Awarded Vendor:
0000104846
The Toro Company
8111 Lyndale Avenue South
Bloomington, MN 55420-1196
Email: jon.stodola@toro.com
Telephone No.: 612-597-3224

Price Agreement Number: 90-000-19-00061AD
Price Agreement Amendment No.: One
Term: May 6, 2019 – March 3, 2020

Ship To:
All State of New Mexico agencies, commissions, institutions, political subdivisions and local public bodies allowed by law.

Invoice:
As Requested

Procurement Specialist: Travis Dutton-Leyda
Telephone No.: 505-827-0477
Email: travis.dutton-leyda@state.nm.us

Title: Ground Maintenance Equipment

This Price Agreement Amendment is to be attached to the respective Price Agreement and become a part thereof.

In accordance with Price Agreement provisions, and by mutual agreement of all parties, this Price Agreement is extended from November 5, 2019 to March 3, 2020 at the same price, terms and conditions.

Except as modified by this amendment, the provisions of the Price Agreement shall remain in full force and effect.

Accepted for the State of New Mexico

Mark Hayden, New Mexico State Purchasing Agent

Date: 11/4/2019

Purchasing Division, 1100 St. Francis Drive 87505, PO Box 6850, Santa Fe, NM 87502-6850 (505) 827-0472
Awarded Vendor:  
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8111 Lyndale Avenue South  
Bloomington, MN 55420-1196

Email: jon.stodola@toro.com  
Telephone No.: 612-597-3224

Price Agreement Number: 90-000-19-00061AD

Payment Terms: Net 30

F.O.B.: Destination

Delivery: As Requested

Ship To:  
All State of New Mexico agencies, commissions, institutions, political subdivisions and local public bodies allowed by law.

Invoice:  
As Requested

Procurement Specialist: Travis Dutton-Leyda

Telephone No.: 505-827-0477

Email: travis.dutton-leyda@state.nm.us

Title: Ground Maintenance Equipment

Term: May 6, 2019 thru November 4, 2019

This Statewide Price Agreement is made subject to the “terms and conditions” as indicated on the attached Participating Addendum.

Authorized Distributor:  
0000013879  
Simpson Norton Corporation  
4144 S. Bullard Ave.  
Goodyear, AZ 85338

Robb Jones, Account Manager  
Simpson Norton Corporation - NM  
505-269-4938  
robb.jones@simpsonnorton.com

900001900061AD001

Purchasing Division: 1100 St. Francis Drive, Santa Fe, NM 87505; PO Box 6850, Santa Fe, NM 87502 (505) 827-0472
PARTICIPATING ADDENDUM  
NASPO VALUEPOINT COOPERATIVE PURCHASING ORGANIZATION  
Ground Maintenance Equipment  
Administered by the Commonwealth of Virginia (hereinafter “Lead State”)  
MASTER AGREEMENT  
VA Contract Number: E194-1485 (“Master Agreement”)  
The Toro Company  
(Hereinafter “Contractor”)  
And  
New Mexico  
(Hereinafter “Participating State”)  
90-000-19-00061AD

1. **Scope:** This addendum (“Agreement”) to the Master Agreement referenced above covers the Ground Maintenance Equipment Contracts lead by the Commonwealth of Virginia for use by state agencies and other entities located in the Participating State authorized by that state’s statutes to utilize state contracts with the prior approval of the state’s chief procurement official.

2. **Participation:** Use of specific NASPO ValuePoint cooperative contracts by agencies, political subdivisions and other entities (including cooperatives) authorized by an individual state’s statutes to use state contracts are subject to the prior approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.

   a. Under the terms and conditions of this Agreement all State of New Mexico Agencies, Commissions, Institutions, Political Sub-divisions and Local Bodies allowed may issue orders for items and/or services described herein. The terms and conditions of this Participating Addendum shall form a part of each other issued hereunder.

3. **Primary Contacts:** The primary contact individuals for this participating addendum are as follows (or their named successors):

<table>
<thead>
<tr>
<th>Commonwealth of Virginia</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Name</strong></td>
<td>Katherine Bosdell, CPPB, VCM, VCO</td>
</tr>
<tr>
<td><strong>Address</strong></td>
<td>1111 E. Broad Street, Richmond, VA 23219</td>
</tr>
<tr>
<td><strong>Telephone</strong></td>
<td>804-786-2397</td>
</tr>
<tr>
<td><strong>Fax</strong></td>
<td>804-786-5413</td>
</tr>
<tr>
<td><strong>E-mail</strong></td>
<td><a href="mailto:katherine.bosdell@dgs.virginia.gov">katherine.bosdell@dgs.virginia.gov</a></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Contractor</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Name</strong></td>
<td>Jon Stodola, Regional Business Manager, Commercial Products Division</td>
</tr>
<tr>
<td><strong>Address</strong></td>
<td>8111 Lyndale Avenue South, Bloomington, MN 55420-1196</td>
</tr>
<tr>
<td><strong>Telephone</strong></td>
<td>612-597-3224</td>
</tr>
<tr>
<td><strong>Fax</strong></td>
<td>952-887-8694</td>
</tr>
<tr>
<td><strong>E-mail</strong></td>
<td><a href="mailto:jon.stodola@toro.com">jon.stodola@toro.com</a></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Participating Entity</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Name</strong></td>
<td>Travis Dutton-Leyda</td>
</tr>
<tr>
<td><strong>Address</strong></td>
<td>1100 S St. Francis Drive, Room 2016</td>
</tr>
<tr>
<td><strong>Telephone</strong></td>
<td>505-827-0477</td>
</tr>
<tr>
<td><strong>E-mail</strong></td>
<td><a href="mailto:travis.dutton-leyda@state.nm.us">travis.dutton-leyda@state.nm.us</a></td>
</tr>
</tbody>
</table>
4. **Participating State Modifications or Additions to Master Agreement:**
(These modifications or additions apply only to actions and relationships within the Participating state.)

5. **Taxes:**
The Contractor shall be reimbursed by the Procuring Agency for applicable New Mexico gross receipts taxes, excluding interest or penalties assessed on the Contractor by any authority. **PLEASE NOTE NO PROPERTY TAX WILL BE PAID TO THE CONTRACTOR BY THE STATE.** The payment of taxes for any money received under this Agreement shall be the Contractor's sole responsibility and should be reported under the Contractor's Federal and State tax identification number(s).

Contractor and any and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall require all subcontractors to hold the Procuring Agency harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal and/or state and local laws and regulations and any other costs, including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

6. **Retainage.**
Reserved

7. **Performance Bond.**
Reserved

8. **Term:**
THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED IN WRITING BY THE STATE PURCHASING AGENT, IF REQUIRED. This Agreement shall begin on date approved by the State Purchasing Agent, if the State Purchasing Agent has signed this Agreement, and end on November 4, 2019. The agency reserves the right to renew the Agreement on an annual basis by mutual agreement not exceed a total of 8 years in accordance with NMSA 1978 §13-1-150. Notwithstanding any of the foregoing, this Agreement shall automatically terminate if the Commonwealth of Virginia's Master Agreement expires or is terminated. Notice shall be provided to New Mexico by the vendor.

9. **Termination:**

A. **Grounds.** The Procuring Agency may terminate this Agreement for convenience or cause. Other than as specified in Section 8 above, the Contractor may only terminate this Agreement based upon the Procuring Agency’s uncured, material breach of this Agreement.

B. **Notice: Procuring Agency Opportunity to Cure.**
1. Except as otherwise provided in sub-paragraph A of this Clause and the Appropriations Clause of this Agreement, the Procuring Agency shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.
2. Contractor shall give Procuring Agency written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the Procuring Agency’s material breaches of this Agreement upon which the termination is based and (ii) state what the Procuring Agency must do to cure such material breaches. Contractor’s notice of termination shall only be effective if the Procuring Agency does not cure all material breaches
within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the Procuring Agency does not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach, and finalize the cure of the breach within sixty (60) days.

3. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to perform the services contracted for, as determined by the Procuring Agency; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the State Purchasing Agent; or (iii) the Agreement is terminated pursuant to the Appropriations Clause of this Agreement.

C. Liability. Except as otherwise expressly allowed or provided under this Agreement, the Procuring Agency's sole liability upon termination shall be to pay for acceptable work performed and goods received prior to the Contractor's receipt or issuance of a notice of termination; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE EITHER PARTY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE OTHER PARTY'S DEFAULT/BREACH OF THIS AGREEMENT.

10. Appropriations:

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, this Agreement shall terminate immediately upon written notice being given by the Procuring Agency to the Contractor. The Procuring Agency's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the Procuring Agency proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment. Notwithstanding the foregoing, upon termination of this Agreement as referenced in this paragraph, Participating State and all of the agencies, political subdivisions and other entities (including cooperatives) who receive products pursuant to this Agreement must either immediately return to Contractor (in like-new condition), or immediately remit full payment for, all products received pursuant to this Agreement but not yet paid for.

11. Status of Contractor:

The Contractor and its agents and employees are independent contractors performing professional or general services for the Procuring Agency and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.
12. **Conflict of Interest; Governmental Conduct Act:**

A. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.

B. The Contractor further represents and warrants that, to the best of its understanding, it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978. Without in any way limiting the generality of the foregoing, the Contractor specifically represents and warrants that:

1) in accordance with NMSA 1978, § 10-16-4.3, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any Procuring Agency employee while such employee was or is employed by the Procuring Agency and participating directly or indirectly in the Procuring Agency’s contracting process;

2) this Agreement complies with NMSA 1978, § 10-16-7(A) because (i) the Contractor is not a public officer or employee of the State; (ii) the Contractor is not a member of the family of a public officer or employee of the State; (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Contractor is a public officer or employee of the State, a member of the family of a public officer or employee of the State, or a business in which a public officer or employee of the State has a substantial interest, public notice was given as required by NMSA 1978, § 10-16-7(A) and this Agreement was awarded pursuant to a competitive process;

3) in accordance with NMSA 1978, § 10-16-8(A), (i) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the State within the preceding year and whose official act directly resulted in this Agreement and (ii) the Contractor is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the State whose official act, while in State employment, directly resulted in the Procuring Agency’s making this Agreement;

4) this Agreement complies with NMSA 1978, § 10-16-9(A) because (i) the Contractor is not a legislator; (ii) the Contractor is not a member of a legislator’s family; (iii) the Contractor is not a business in which a legislator or a legislator’s family has a substantial interest; or (iv) if the Contractor is a legislator, a member of a legislator’s family, or a business in which a legislator or a legislator’s family has a substantial interest, disclosure has been made as required by NMSA 1978, § 10-16-7(A), this Agreement is not a sole source or small purchase contract, and this Agreement was awarded in accordance with the provisions of the Procurement Code;

5) in accordance with NMSA 1978, § 10-16-13, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and

6) in accordance with NMSA 1978, § 10-16-3 and § 10-16-13.3, the Contractor has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the Procuring Agency.

C. Contractor’s representations and warranties in paragraphs A and B of this Clause are material representations of fact upon which the Procuring Agency relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the Procuring Agency if, at any time during the term of this Agreement, Contractor learns that Contractor’s representations and warranties in paragraphs A and B of this Clause were erroneous on the effective date of this
Agreement or have become erroneous by reason of new or changed circumstances. If it is later
determined that Contractor’s representations and warranties in paragraphs A and B of this Clause were
erroneous on the effective date of this Agreement or have become erroneous by reason of new or
changed circumstances, in addition to other remedies available to the Procuring Agency and
withstanding anything in the Agreement to the contrary, the Procuring Agency may immediately
terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this Agreement.

13. Amendment:
A. This Agreement shall not be altered, changed or amended except by instrument in writing
executed by the parties hereto and all other required signatories.
B. If the Procuring Agency proposes an amendment to the Agreement to unilaterally reduce
funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of
the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination
provisions as set forth in the Terminations Clause of this Agreement, or to agree to the reduced
funding.

14. Merger:
This Agreement incorporates all the agreements, covenants and understandings between the parties
hereto concerning the subject matter hereof, and all such covenants, agreements and understandings
have been merged into this written Agreement. No prior agreement or understanding, oral or
otherwise, of the parties or their agents shall be valid or enforceable unless it is explicitly referenced in
this Agreement.

15. Penalties for violation of law:
The Procurement Code, NMSA 1978 §§ 13-1-28 through 13-1-199, imposes civil and criminal
penalties for violation of the statute. In addition, the New Mexico criminal statutes impose felony
penalties for illegal acts, including bribes, gratuities and kickbacks.

16. Equal Opportunity Compliance:
The Contractor agrees to abide by all applicable federal and state laws and rules and regulations, and
executive orders of the Governor of the State of New Mexico, pertaining to equal employment
opportunity. In accordance with all such laws of the State of New Mexico, the Contractor assures that
no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry,
sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual
orientation or gender identity, be excluded from employment with or participation in, be denied the
benefits of, or be otherwise subjected to discrimination under any program or activity performed under
this Agreement. If Contractor is found not to be in compliance with these requirements during the life
of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

17. Workers Compensation:
The Contractor agrees to comply with applicable state laws and rules applicable to workers
compensation benefits for its employees. If the Contractor fails to comply with the Workers
Compensation Act and applicable rules when required to do so, this Agreement may be terminated by
the Procuring Agency.
18. **Applicable Law:**

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with NMSA 1978, § 38-3-1 (G). By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

19. **Records and Financial Audit:**

The Contractor shall maintain detailed time and expenditure records that indicate the date, time, nature and cost of services rendered during the Agreement’s term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the Procuring Agency, the Department of Finance and Administration and the State Auditor. The Procuring Agency shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Procuring Agency to recover excessive or illegal payments.

20. **Invalid Term or Condition:**

If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

21. ** Enforcement of Agreement:**

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

22. **Non-Collusion:**

In signing this Agreement, the Contractor certifies the Contractor has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with this offer submitted to the State Purchasing Agent or agency or entity.

23. **Notices:**

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

<table>
<thead>
<tr>
<th>To the Procuring Agency:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name: Mark Hayden, State Purchasing Director, State Purchasing Division</td>
</tr>
<tr>
<td>Address: 1100 St. Francis Dr., Room 2016, Santa Fe, NM 87505</td>
</tr>
<tr>
<td>Telephone: (505) 827-0472</td>
</tr>
<tr>
<td>Fax: (505) 827-2484</td>
</tr>
</tbody>
</table>
To the Contractor:

<table>
<thead>
<tr>
<th>Name:</th>
<th>THE TORO COMPANY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address:</td>
<td>8111 Lyndale Avenue South, Bloomington, MN 55420</td>
</tr>
<tr>
<td>Telephone:</td>
<td>612-597-3224</td>
</tr>
<tr>
<td>Contact:</td>
<td>Jon Stodola</td>
</tr>
<tr>
<td>Email:</td>
<td><a href="mailto:Jon_stodola@toro.com">Jon_stodola@toro.com</a></td>
</tr>
<tr>
<td>Contact:</td>
<td>General Council</td>
</tr>
<tr>
<td>Mail:</td>
<td>8111 Lyndale Avenue South, Bloomington, MN 55420</td>
</tr>
</tbody>
</table>

24. **Succession:**

This Agreement shall extend to and be binding upon the successors and assigns of the parties.

25. **Headings:**

Any and all headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement. Numbered or lettered provisions, sections and subsections contained herein, refer only to provisions, sections and subsections of this Agreement unless otherwise expressly stated.

26. **Default/Breach:**

In case of Default and/or Breach by the Contractor, for any reason whatsoever, the Procuring Agency and the State of New Mexico may procure the goods or Services from another source and the State of New Mexico may also seek all other remedies under the terms of this Agreement and under law or equity.

27. **Equitable Remedies:**

Contractor acknowledges that its failure to comply with any provision of this Agreement may cause the Procuring Agency irrevocable harm and that a remedy at law for such a failure may be an inadequate remedy for the Procuring Agency, and the Contractor consents to the Procuring Agency’s obtaining from a court of competent jurisdiction, specific performance, or injunction, or any other equitable relief in order to enforce such compliance. Procuring Agency’s rights to obtain equitable relief pursuant to this Agreement shall be in addition to, and not in lieu of, any other remedy that Procuring Agency may have under applicable law, including, but not limited to, monetary damages.

28. **New Mexico Employees Health Coverage:**

A. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of this Agreement, Contractor certifies, by signing this agreement, to have in place, and agree to maintain for the term of the Agreement, health insurance for those employees and offer that health insurance to those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed $250,000 dollars.

B. Contractor agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.

C. Contractor agrees to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: http://insurenewmexico.state.nm.us/.
29. **Employee Pay Equity Reporting:**

Contractor agrees if it has ten (10) or more New Mexico employees OR eight (8) or more employees in the same job classification, at any time during the term of this Agreement, to complete and submit the PE10-249 form on the annual anniversary of the initial report submittal for agreements up to one (1) year in duration. If contractor has (250) or more employees contractor must complete and submit the PE250 form on the annual anniversary of the initial report submittal for agreements up to one (1) year in duration. For agreements that extend beyond one (1) calendar year, or are extended beyond one (1) calendar year, contractor also agrees to complete and submit the PE10-249 or PE250 form, whichever is applicable, within thirty (30) days of the annual agreement anniversary date of the initial submittal date or, if more than 180 days has elapsed since submittal of the last report, at the completion of the Agreement, whichever comes first. Should contractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, contractor agrees to provide the required report within ninety (90 days) of meeting or exceeding the size requirement. That submittal date shall serve as the basis for submittals required thereafter. Contractor also agrees to levy this requirement on any subcontractor(s) performing more than 10% of the dollar value of this Agreement if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of the Agreement. Contractor further agrees that, should one or more subcontractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, Contractor will submit the required report, for each such subcontractor, within ninety (90 days) of that subcontractor meeting or exceeding the size requirement. Subsequent report submittals, on behalf of each such subcontractor, shall be due on the annual anniversary of the initial report submittal. Contractor shall submit the required form(s) to the State Purchasing Division of the General Services Department, and other departments as may be determined, on behalf of the applicable subcontractor(s) in accordance with the schedule contained in this Clause. Contractor acknowledges that this subcontractor requirement applies even though Contractor itself may not meet the size requirement for reporting and be required to report itself.

Notwithstanding the foregoing, if this Agreement was procured pursuant to a solicitation, and if Contractor has already submitted the required report accompanying their response to such solicitation, the report does not need to be re-submitted with this Agreement.

30. **Indemnification:**

The Contractor shall defend, indemnify and hold harmless the Procuring Agency and the State of New Mexico from all actions, proceeding, claims, demands, costs, damages, attorneys’ fees and all other liabilities and expenses of any kind from any source which arise out of a proven breach by Contractor of this Agreement or allegations that Contractor’s product had a manufacturing or design defect, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable but no longer than ten (10) calendar days, notify the legal counsel of the Procuring Agency and the Risk Management Division of the New Mexico General Services Department by certified mail.
31. **Default and Force Majeure:**

The State reserves the right to cancel all or any part of any orders placed under this Agreement without cost to the State, if the Contractor fails to meet the provisions of this Agreement and, except as otherwise provided herein, to hold the Contractor liable for any legally obtainable excess cost occasioned by the State due to the Contractor's default. The Contractor shall not be liable for any excess costs if failure to perform the order arises out of causes beyond the reasonable control and without the fault or negligence of the Contractor, such causes include, but are not restricted to, acts of God or the public enemy, acts of the State or Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, labor shortages, freight embargoes, unusually severe weather, impracticality, supply limitations or restrictions, and defaults of subcontractors due to any of the above, unless the State shall determine that the supplies or services to be furnished by the subcontractor were obtainable from other sources at substantially equivalent cost in sufficient time to permit the Contractor to meet the required delivery schedule. The rights and remedies of the State provided in this Clause shall not be exclusive and are in addition to any other rights now being provided by law or under this Agreement.

32. **Assignment:**

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the Procuring Agency.

33. **Subcontracting:**

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the Procuring Agency. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the Procuring Agency. Notwithstanding the foregoing, this clause shall not require approval of, or restrict in any way, Contractor's right to work with its dealers and distributors to the extent such work is contemplated by the Master Agreement.

34. **Inspection of Plant:**

The State Purchasing Agent or agency or entity that is a party to this Agreement may inspect, at any reasonable time during Contractor's regular business hours and upon at least one week prior written notice, the Contractor's plant or place of business which is related to the performance of this Agreement.

35. **Commercial Warranty:**

The Contractor agrees that the tangible personal property or services furnished under this Agreement shall be covered by the terms of the Contractor's Master Agreement and that the rights and remedies provided herein shall extend to the State and are in addition to and do not limit any rights afforded to the State by any other Clause of this Agreement or order.

36. **Condition of Proposed Items:**

Where tangible personal property is a part of this Agreement, all proposed items are to be NEW and of most current production, unless otherwise specified.
37. **Release:**
Reserved

38. **Confidentiality:**
Any Confidential Information marked as such that is provided to the Contractor by the Procuring Agency or, developed by the Contractor based on marked Confidential Information provided by the Procuring Agency in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the Procuring Agency. Upon termination of this Agreement, Contractor shall deliver all Confidential Information in its possession to the Procuring Agency within thirty (30) Business Days of such termination.

39. **Contractor Personnel:**
Provide a list of authorized dealers.

B. **Personnel Changes.** Replacement of any personnel shall be made with personnel of equal ability, experience, and qualification. The Contractor shall also make interim arrangements to assure that the Project progress is not affected by the loss of personnel.

40. **Incorporation by Reference and Precedence:**
If this Agreement has been procured pursuant to a request for proposals, this Agreement is derived from (1) the request for proposal, (including any written clarifications to the request for proposals and any agency response to questions); (2) the Contractor's best and final offer; and (3) the Contractor's response to the request for proposals.
In the event of a dispute under this Agreement, applicable documents will be referred to for the purpose of clarification or for additional detail in the following order of precedence: (1) amendments to the Agreement in reverse chronological order; (2a) the this Agreement, including the scope of work and all terms and conditions thereof; (2b) the Master Agreement; (3) the request for proposals, including attachments thereto and written responses to questions and written clarifications; (4) the Contractor's best and final offer if such has been made and accepted by the SPA or Procuring Agency or entity; and (5) the Contractor's response to the request for proposals.

41. **Inspection:**
If this Agreement is for the purchase of tangible personal property (goods), final inspection and acceptance shall be made at Destination. Tangible personal property rejected at Destination for non-conformance to specifications shall be removed at Contractor's risk and expense promptly after notice of rejection and shall not be allowable as billable items for payment.

42. **Inspection of Services:**
If this Agreement is for the purchase of services, the following terms shall apply.

A. Services, as used in this Clause, include services performed, workmanship, and material furnished or utilized in the performance of services.

B. The Contractor shall provide and maintain an inspection system acceptable to the State Purchasing Agent or other party to this Agreement covering the services under this Agreement. Complete records of all inspection work performed by the Contractor shall be
maintained and made available to the State Purchasing Agent or other party to this Agreement during the term of performance of this Agreement and for as long thereafter as the Agreement requires.

C. The State Purchasing Agent or other party to this Agreement has the right to inspect and test all services contemplated under this Agreement to the extent practicable at all times and places during the term of the Agreement. The State Purchasing Agent or other party to this Agreement shall perform inspections and tests in a manner that will not unduly delay or interfere with Contractor’s performance.

D. If the State Purchasing Agent or other party to this Agreement performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in Agreement price, all reasonable facilities and assistance for the safe and convenient performance of such inspections or tests.

E. If any part of the services do not conform with the requirements of this Agreement, the State Purchasing Agent or other party to this Agreement may require the Contractor to re-perform the services in conformity with the requirements of this Agreement at no increase in Agreement amount. When the defects in services cannot be corrected by re-performance, the State Purchasing Agent or other party to this Agreement may:

(1) require the Contractor to take necessary action(s) to ensure that future performance conforms to the requirements of this Agreement; and

(2) reduce the Agreement price to reflect the reduced value of the services performed.

F. If the Contractor fails to promptly re-perform the services or to take the necessary action(s) to ensure future performance in conformity with the requirements of this Agreement, the State Purchasing Agent or other party to this Agreement may:

(1) by Agreement or otherwise, perform the services and charge to the Contractor any cost incurred by the State Purchasing Agent or other party to this Agreement that is directly related to the performance of such service; or

(2) terminate the Agreement for default.

THE PROVISIONS OF THIS CLAUSE ARE NOT EXCLUSIVE AND DO NOT WAIVE THE STATE PARTIES’ TO THIS AGREEMENT OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR’S DEFAULT/BREACH OF THIS AGREEMENT.

43. **Insurance:**

If the services contemplated under this Agreement will be performed on or in State facilities or property, Contractor shall maintain in force during the entire term of this Agreement, the following insurance coverage(s), naming the State of New Mexico, General Services Department or other party to this Agreement as additional insured.

A. Workers Compensation (including accident and disease coverage) at the statutory limit.

   Employers liability: $100,000.

B. Comprehensive general liability (including endorsements providing broad form property damage, personal injury coverage and contractual assumption of liability for all liability the Contractor has assumed under this Agreement). Limits shall not be less than the following:

   a. Bodily injury: $1,000,000 per person /$1,000,000 per occurrence.

   b. Property damage or combined single limit coverage: $1,000,000.
c. Automobile liability (including non-owned automobile coverage): $1,000,000.

d. Umbrella: $1,000,000.

C. Contractor shall maintain the above insurance for the term of this Agreement and name the State of New Mexico, General Services Department or other party to this Agreement as an additional insured and provide for 30 days cancellation notice on any Certificate of Insurance form furnished by Contractor. Such certificate shall also specifically state the coverage provided under the policy is primary over any other valid and collectible insurance and provide a waiver of subrogation.

44. Arbitration:
Any controversy or claim arising between the parties shall be settled by arbitration pursuant to NMSA 1978 § 44-7A-1 et seq.

45. New Mexico Administrative Reporting and Fees:
All contracts and Purchase Orders arising out of this agreement shall be deemed to include an Administrative Fee assessment at the rate of one percent (1.00%) for the gross total sales and other revenues (including commissions and fees charged). This assessment shall apply to all New Mexico state agencies and local public bodies. "Gross total sales" means any invoiced amount less any applicable state and local taxes.

For reporting purposes: list payments received for the issued invoice during the applicable quarter by state agency, local public body and invoice number. The Quarters are as follows:

<table>
<thead>
<tr>
<th>Quarter:</th>
<th>Period End:</th>
<th>Report Due:</th>
</tr>
</thead>
<tbody>
<tr>
<td>First</td>
<td>September 30</td>
<td>October 31</td>
</tr>
<tr>
<td>Second</td>
<td>December 31</td>
<td>January 31</td>
</tr>
<tr>
<td>Third</td>
<td>March 31</td>
<td>April 30</td>
</tr>
<tr>
<td>Fourth</td>
<td>June 30</td>
<td>July 31</td>
</tr>
</tbody>
</table>

Even if contractor experiences zero sales during the quarter, a report is still required. This will also apply if the contract starts partial within a Quarter. Reports and Administrative Fee shall be due no later than thirty (30) days following the end of the quarter. Only submit one payment and one report for each quarter, do not combine payments or reports.

Payment shall be made by check payable to the "State Purchasing Division." This contract number 90-000-19-00061AD must be included on all payments and Quarterly Sales Reports.

Remit Checks to: State Purchasing Division
1100 St. Francis Drive, Room 2016
PO Box 6850
Santa Fe, NM 87505
Attn: Compliance Officer

Sample Reports can be found at: http://www.generalservices.state.nm.us/statepurchasing/resourcesandinformation.aspx#Vendors
Email completed reports to: GSDQuarterlyUsageR@state.nm.us
For questions regarding the Administrative Fees and Quarterly Sales Reports contact the Compliance Officer at (505) 827-0472.
46. **Lease Agreements:**  
Reserved

47. **Subcontractors:**  
All Toro dealers and distributors authorized in the State of New Mexico, as shown on the dedicated Toro (cooperative contract) website, are approved to provide sales and service support to participants in the Master Agreement. The Toro dealers' and distributors' participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement.

48. **Purchase Order Instructions:**  
All orders should contain the following: (1) Mandatory Language “PO is subject to NASPO ValuePoint Contract # E194-1485” (2) State/entity Name, Address, Contact, & Phone-Number (3) Purchase order amount. Orders must be made out and sent to the Toro distributor so they can arrange for proper ordering and installation of your unit.

49. **Price Agreement Number:**  
All purchase orders issued by purchasing entities within the jurisdiction of this participating addendum shall include the Participating State contract number: 90-000-19-00061AD and the Lead State price agreement number: E194-1485.

50. **Individual Customer:**  
Each State agency and political subdivision, as a Participating Entity, that purchases products/services will be treated as if they were Individual Customers. Except to the extent modified by a Participating Addendum, each agency and political subdivision will be responsible to follow the terms and conditions of the Master Agreement; and they will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement. Each agency and political subdivision will be responsible for their own charges, fees, and liabilities. Each agency and political subdivision will have the same rights to any indemnity or to recover any costs allowed in the contract for their purchases. The Contractor will apply the charges to each Participating Entity individually.

This Agreement and the Master Agreement number E194-1485 (administered by the Commonwealth of Virginia) together with its exhibits, set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary to or in addition to the terms and conditions of this Agreement and the Master Agreement, together with its exhibits, shall not be added to or incorporated into this Addendum or the Master Agreement and its exhibits, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Agreement and the Master Agreement and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms within the Participating State.
IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of execution by both parties below.

<table>
<thead>
<tr>
<th>Participating State: State of New Mexico</th>
<th>Contractor: The Toro Company</th>
</tr>
</thead>
<tbody>
<tr>
<td>By: Mark Hayden</td>
<td>By: Grant Young</td>
</tr>
<tr>
<td>Name: Mark Hayden</td>
<td>Name: Grant Young</td>
</tr>
<tr>
<td>Title: State Purchasing Director</td>
<td>Title: GM, Commercial</td>
</tr>
<tr>
<td>Date: 5/6/2019</td>
<td>Date: 5/6/2019</td>
</tr>
</tbody>
</table>

For questions on executing a participating addendum, please contact:

<table>
<thead>
<tr>
<th>NASPO ValuePoint</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Cooperative Development Coordinator</td>
<td>Tim Hay</td>
</tr>
<tr>
<td>Telephone</td>
<td>503-428-5705</td>
</tr>
<tr>
<td>E-mail</td>
<td><a href="mailto:thay@naspovaluepoint.org">thay@naspovaluepoint.org</a></td>
</tr>
</tbody>
</table>

[Please email fully executed PDF copy of this document to PA@naspovaluepoint.org to support documentation of participation and posting in appropriate data bases]